IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

CRP.No. 1450 of 2004

ELEOP.71/1999 of DISTRICT COURT, ALAPPUZHA

REVN. PETITIONER: RESPONDENT:

THE KERALA STATE ELECTRICITY BOARD
REP. BY ITS SECRETARY, VYDYUTHI BHAVAN,
THIRUVANANTHAPURAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENT: PETITIONER:

MARY, W/O.XAVIER,
PULICKAL VEEDU, KUMBALANGI VILLAGE,
COCHIN, ERNAKULAM.

BY ADV. SRI.C.V.MANUVILSAN
SRI.G.SUDHEER (THURAVOOR)
SRI.R.JYOTHIKRISHNAN
SRI.G.B.PANICKER

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

I.A.NOS.3897/2004 & 1489/2007 IN C.R.P.NO.1450/2004

DISMISSED

30/11/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

C.R.P. NO. 1450 OF 2004 G

Dated this the 30th day of November, 2007

O R D E R

Aggrieved by the order dated 25.3.2004 in O.P.(Ele.) No.71 of 1999, on the file of the court of the District Judge of Alappuzha, the Kerala State Electricity Board has come up in Revision.

2. For the drawal of Aroor-Mararikulam 110 KV electric line, nine yielding coconut trees, fifteen arecanut trees, three coconut saplings and eight other miscellaneous trees were cut and removed from an extent of 12 cents of land belonging to the respondent. A sum of Rs.30,931/- was awarded as compensation. Dissatisfied with the amount awarded, the respondent herein filed the Original Petition (Electricity) before the court below claiming an enhanced compensation of Rs.7,67,000/-.

3. Before the trial court, the claimant was examined as PW1. She relied on Ext.A1 sale deed executed on 14.3.1996, to show the value of the property. As per Ext.A1, 10 cents of land was sold for Rs.4,90,000/-. The cutting of trees was on 5.2.1992, much before Ext.A1 sale deed. The court below held that Ext.A1 sale deed cannot be taken into account for fixing the market value of the property belonging to the respondent herein.

4. The respondent/claimant also relied on the Commissioner's report, wherein the Commissioner stated that, on enquiry with the local people, he came to understand that value of land would be Rs.30,000/- per cent. Except this statement, no acceptable data was produced by the Commissioner. The court below held that the report submitted by the Commissioner is not supported by any data. Apparently, the court below did not rely on the Commissioner's report to ascertain the market value of the property.

5. As regards the compensation for cutting of trees, the court below held that the claimant would be entitled to an additional amount of Rs.7,732/-. No reasons are stated for arriving at this conclusion. As regards the claim for compensation on account of diminution of land value, the court below held that the value of the property can be taken as Rs.15,000/- per cent. Assessing the diminution of land value at 40% of the value so arrived at, the court below fixed the compensation at Rs.60,000/- for ten cents and granting 100% of land value in respect of two cents, another Rs.30,000/- was awarded. Thus on account of diminution of land value, a sum of Rs.90,000/- was awarded. The total enhancement granted by the court below was Rs.97,732/-.

6. Learned counsel appearing for the Board submitted that the amount awarded by the court below is exorbitant and that the court below did not take into account the settled principles of law in the matter of granting compensation for tree cutting and for granting compensation on account of diminution of land value. The counsel also relied on the decision of the Supreme Court in **K.S.E.B.** v. **Livisha** (2007 (3) KLT 1 (SC)). Counsel for the Board also relied on the decision in **Kerala State Electricity Board** v. **T.T.P.Kayyu** (1996 (1) KLT 432 (F.B.)).

7. In Livisha's case, the Supreme Court held thus:

> "10. The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used.
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> 11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case."

In 1996 (1) KLT 432, the Supreme Court held thus:

> "Thus it is open to contend that if the land on which electric lines are drawn are fit for other cultivation which would not conflict with the requirement of open space to be left from the electric lines and if such cultivation can be carried on in a reasonably profitable manner, the claimant is expected to carry on such cultivation. If he does not do so, it is a factor which has to be taken into consideration at the

> time of quantification of the compensation for diminution in land value."

In Kayyur's case the Supreme Court rejected the contention that even for the properties which are essentially agricultural properties, compensation can be claimed for diminution in market value as a building site or commercial or industrial site.

8. Learned counsel for the respondent/claimant submitted that the amount awarded by the court below is just and reasonable and the court below took into account the real value of the property and the loss occasioned to the claimant.

9. The court below has not adhered to the principles laid down by the Supreme Court in 1996 (1) KLT 432 and the principles laid down in *Livisha's* case which was rendered subsequently. The compensation was fixed not on the basis of any acceptable materials. No reasons are stated by the court below for arriving at the conclusion as to why 40% of the land value was granted as diminution of land value.

10. I am of the view that the matter requires reconsideration by the court below. Accordingly, the Civil Revision Petition is allowed, the order impugned is set aside and the matter is remanded to the court below for

fresh disposal in the light of the principles laid down in 1996(1) KLT 432, 2007 (3) KLT 1(SC) and other binding decisions. All the contentions of the parties are left open for fresh consideration. No order as to costs.

The parties shall appear before the court below on 9.1.2008.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO.1450 OF 2004 G

O R D E R

30th November, 2007